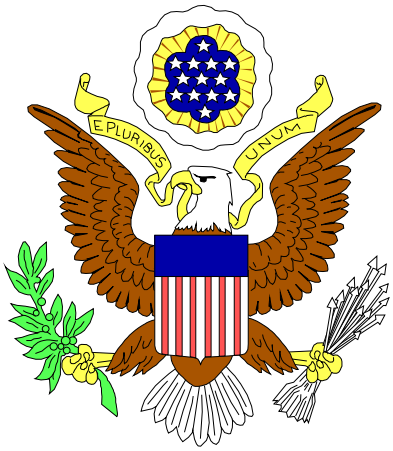
UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF NEW YORK



LOCAL RULES OF CIVIL PROCEDURE
(Effective January 1, 2011)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE ADOPTION OF LOCAL RULES OF CIVIL PROCEDURE

FOR THE

WESTERN DISTRICT OF NEW YORK

These rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that these rules, as amended, shall apply to all actions commenced on or after January 1, 2011, and, insofar as just and practicable, all actions then pending.

/s/ William M. Skretny

WILLIAM M. SKRETNY
Chief United States District Judge

/s/ John T. Curtin

JOHN T. CURTIN
Senior United States District Judge

/s/ Richard J. Arcara

RICHARD J. ARCARA
United States District Judge

/s/ Michael A. Telesca

MICHAEL A. TELESCA
Senior United States District Judge

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge

/s/ David G. Larimer
DAVID G. LARIMER
Senior United States District Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT JUDGES

William M. Skretny, Chief Judge. . . . . U.S. Courthouse, Buffalo, NY
Richard J. Arcara. . . . . U.S. Courthouse, Buffalo, NY
Charles J. Siragusa. . . . . U.S. Courthouse, Rochester, NY
John T. Curtin, Senior Judge. . . . . U.S. Courthouse, Buffalo, NY
Michael A. Telesca, Senior Judge. . . . . U.S. Courthouse, Rochester, NY
David G. Larimer, Senior Judge. . . . . U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

Carl L. Bucki, Chief Judge. . . . . U.S. Courthouse, Buffalo, NY
Michael J. Kaplan. . . . . U.S. Courthouse, Buffalo, NY
John C. Ninfo II. . . . . U.S. Courthouse, Rochester, NY

UNITED STATES MAGISTRATE JUDGES

Hugh B. Scott. . . . . U.S. Courthouse, Buffalo, NY
Jonathan W. Feldman. . . . . U.S. Courthouse, Rochester, NY
H. Kenneth Schroeder, Jr. . . . . U.S. Courthouse, Buffalo, NY
Marian W. Payson. . . . . U.S. Courthouse, Rochester, NY
Jeremiah J. McCarthy. . . . . U.S. Courthouse, Buffalo, NY
Leslie G. Foschio. . . . . U.S. Courthouse, Buffalo, NY
Victor E. Bianchini. . . . . U.S. Courthouse, Buffalo, NY

CLERK OF UNITED STATES DISTRICT COURT
Michael J. Roemer. . . . . Buffalo, NY
CHIEF DEPUTY CLERK
Jeanne M. Spampata. . . . . Buffalo, NY
DEPUTY-IN-CHARGE
Jean Marie McCarthy. . . . . Buffalo, NY

CLERK OF UNITED STATES BANKRUPTCY COURT
Paul R. Warren. . . . . Buffalo, NY
CHIEF DEPUTY CLERK
Lisa Bertino-Beaser. . . . . Buffalo, NY
DEPUTY-IN-CHARGE
Vacant . . . . . .

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Marianne Mariano. . . . . Buffalo, NY

CHIEF PROBATION OFFICER
Anthony M. San Giacomo. . . . . Buffalo, NY

UNITED STATES MARSHAL
Vacant . . . . . .

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

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RULE 1.1

TITLE

These rules are the Local Rules of Civil Procedure for the United States District Court for the Western District of New York. They supplement the Federal Rules of Civil Procedure and are numbered to conform therewith. The Local Rules of Civil Procedure shall be cited as "L.R. Civ. P."

RULE 1.2

THE "COURT"

Wherever these rules refer to the "Court", "Judge", or similar term, the term includes a Magistrate Judge, unless the context requires otherwise.

RULE 1.3

AVAILABILITY OF LOCAL RULES

Copies of these Local Rules and all Court documents referenced herein are available at the Clerk's offices in Buffalo and Rochester, and on the Court's webpage at www.nywd.uscourts.gov. The following documents may be modified from time to time, in the Court's discretion. Counsel and *pro se* litigants are expected to comply with the most current Rules, plans and procedures.

- Alternative Dispute Resolution Plan
- Amended Plan for the Disposition of *Pro Se* Cases
- CM/ECF Administrative Procedures Guide
- District Court Schedule of Fees
- Judge's Individual Rules
- Jury Plan
- Standing Orders
- Criminal Justice Act Plan

Persons, other than litigants permitted to proceed *in forma pauperis*, who wish to obtain a copy of these Local Rules and/or other documents by mail must provide a self-addressed envelope at least 9" x 12" in size with sufficient postage affixed.

RULE 3

CIVIL COVER SHEET

A completed civil cover sheet on a form available from the Clerk shall be submitted with every complaint, notice of removal, or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

RULE 5.1

FILING AND SERVING PAPERS

(a) **Filing Procedures**. All civil cases filed in this Court are assigned to the Electronic Case Filing System ("ECF"). The procedures for electronic filing and any exceptions to the electronic filing requirements are set forth in the CM/ECF Administrative Procedures Guide. All pleadings and other papers shall be filed and served in accordance with the Federal Rules of Civil Procedure and the CM/ECF Administrative Procedures Guide.

(b) **Filing Fees**. A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee, found in the District Court Schedule of Fees, before the case will be docketed and process issued. Indigent litigants should refer to L.R. Civ. P. 5.2(c) for information on obtaining relief from this requirement.

(c) **Venue**. Upon filing, civil cases are assigned to a Judge in either the Court's Buffalo Division (typically, cases arising in Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming counties), or its Rochester Division (typically, cases arising in Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates counties). The Court may transfer cases from one division to another, *sua sponte*. Parties requesting transfer of a case from Buffalo to Rochester, or vice versa, shall file a written motion requesting such relief, returnable before the Judge to whom the case is originally assigned.

(d) **Date-Stamped Copies**. Parties requesting date-stamped copies of filed documents must provide a paper copy for date-stamping, and a self-addressed, adequately-sized envelope with proper postage affixed.

(e) **Related Cases**. Each attorney appearing in a civil case has a continuing duty to promptly notify the Clerk when the attorney has reason to believe that said case is related to some other pending civil or criminal action(s) such that their assignment to the same judge would avoid unnecessary duplication of judicial effort. As soon as the attorney becomes aware of such a relationship, the attorney shall notify the Clerk by letter of the relevant facts, and the Clerk will transmit that notification to the Judges to whom the cases have been assigned.

(f) **Title 11**. Pursuant to 28 U.S.C. § 157, all cases under Title 11 of the United States Code and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the United States Bankruptcy Court for the Western District of New York. Any party seeking to file papers asserting a claim under Title 11 shall, at the time of filing, notify the Clerk in writing that the papers contain such a claim. Written notification shall be by letter addressed to the Clerk, with copies to all counsel or parties.

(g) **Service by Overnight Delivery**. All papers, other than a subpoena or a summons and complaint, may be served on counsel of record by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery shall be complete upon deposit of the paper(s), enclosed in a properly addressed wrapper, into the custody of the overnight delivery service, prior to the latest time designated by the service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Civil Procedure or these Local Rules is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the Court's jurisdiction.

RULE 5.2

PRO SE ACTIONS

(a) **Filing Complaints**. A *pro se* plaintiff who is filing an action based on social security, employment discrimination, or non-prisoner or prisoner civil rights claims, should file the complaint on the Court's standard form for that type of action, available at the Clerk's office or on the Court's webpage at www.nywd.uscourts.gov. A complaint that is not filed on the appropriate Court form may be returned to the plaintiff for refiling on the proper form, if a Judge so directs.

(b) **Filing Habeas Petitions**. Habeas corpus petitions under 28 U.S.C. §§ 2241, 2254 and 2255 should be filed on the applicable petition form, which can be obtained on request from the Clerk's office or found on the Court's webpage at www.nywd.uscourts.gov. Section 2255 cases are to be filed without charge. A petition that is not filed on the appropriate Court form may be returned to the petitioner for refiling on the proper form, if a Judge so directs.

(c) ***In Forma Pauperis* Applications**. An indigent *pro se* litigant may seek *in forma pauperis* status to file his or her action without payment of the filing fee. To do so, the litigant must complete the *in forma pauperis* motion and affirmation form available at the Clerk's office or on the Court's webpage at www.nywd.uscourts.gov, and file it along with the complaint or petition. The case will be given a civil docket number and the *in forma pauperis* motion will be submitted to a Judge. If the Judge denies *in forma pauperis* status, the litigant will be notified by written order that the case will be dismissed, without prejudice, unless he or she pays the filing fee by the date specified in the order.

(d) **Service**. A party appearing *pro se* must furnish the Court with a current address at which papers may be served on the litigant. The Court will assume that the litigant has received papers sent to the address he or she provides. The Court must have a current address at all times. Thus, a *pro se* litigant must inform the Court immediately, in writing, of any change of address. Failure to do so may result in dismissal of the case, with prejudice.

(e) **Case Assignment**.

(1) A case filed by a *pro se* litigant shall be assigned to the same Judge assigned to any prior case(s) filed by the same litigant.

(2) Cases filed by *pro se* inmate litigants shall be assigned to either a District Judge or Magistrate Judge. If the assignment is to a Magistrate Judge, the parties shall be advised of the assignment and of their right to consent to final disposition of the case by the Magistrate Judge, pursuant to 28 U.S.C. § 636(c). If any party refuses or fails to consent to proceed to disposition by the Magistrate Judge, the case will be randomly assigned to a District Judge, who may refer any matters concerning the case to the original Magistrate Judge, pursuant to 28 U.S.C. § 636(b).

(f) **Filing Discovery Materials**. Notwithstanding the provisions of Federal Rule of Civil Procedure 5(d)(1), all discovery materials in *pro se* cases shall be filed with the Court.

(g) **Motions or Papers in Multiple Cases**. Where a *pro se* litigant has more than one action pending, any motion or other papers purporting to relate to more than one action will not be accepted for filing, except upon a finding of good cause. A motion or other papers shall be directed to the issues raised in one action only, and shall be filed only in that action.

(h) **Briefing Schedules**. After a motion is filed and served in a *pro se* case, the Court will issue an order setting deadlines for filing and service of opposing papers, and for filing and service of reply papers if the moving party has stated an intent to reply. Oral argument will be scheduled solely at the discretion of the Court.

(I) **General Requirements**. All *pro se* litigants shall become familiar with, follow, and comply with the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure, including those rules with special provisions for *pro se* litigants such as L.R. Civ. P. 1.3, 5.2, 11 and 16. Failure to comply with the Federal Rules of Civil Procedure and Local Rules of Civil Procedure may result in the dismissal of the case, with prejudice.

RULE 5.3

SEALING OF COMPLAINTS AND DOCUMENTS IN CIVIL CASES

(a) Except where restrictions are imposed by statute or rule, there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access.

(b) Upon a proper showing, the Court may, *sua sponte*, enter an order directing that a case be sealed in its entirety, or as to certain parties or documents. The Court may do so when the case is initiated, or at any stage of the proceeding.

(c) A party seeking to have a document, party, or case sealed shall comply with the procedures set forth in the CM/ECF Administrative Procedures Guide.

(d) A complaint presented for filing with a motion to seal and proposed order shall be treated as a sealed case pending approval of the proposed order, and the filing party shall comply with the sealing procedures set forth in the CM/ECF Administrative Procedures Guide.

(e) Unless otherwise directed by the Court, a sealed document or case shall remain sealed even after final disposition of the case. A party seeking to have a sealed document unsealed must seek relief by motion on notice.

RULE 5.4

PAYMENT OF FEES IN ADVANCE

(a) The Clerk is not required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for that service is paid in advance. *See* District Court Fee Schedule.

RULE 7

MOTION PRACTICE

(a) **Submissions**.

(1) **Notice of Motion**. A notice of motion is required for all motions, and must state: the relief sought, the grounds for the request, the papers submitted in support, and the return date for the motion, if known. A moving party who intends to file and serve reply papers must so state in the notice of motion.

(2) **Memorandum of Law**.

(A) **Required**. Absent leave of Court or as otherwise specified, upon any motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve a memorandum of law and the opposing party shall file and serve an answering memorandum. Failure to comply with this requirement may constitute grounds for resolving the motion against the non-complying party. The moving party may file a reply memorandum, but is not required to do so.

(B) **Discretionary**. Nothing in these Local Rules precludes a moving party from filing a memorandum in support of a motion made other than pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a). The Court, in its discretion, may require written memoranda on such other motions.

(C) **Page Limits**. Memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length, and reply memoranda shall not exceed ten pages in length. A party seeking to exceed the page limit must make application by letter to the Judge hearing the motion, with copies to all counsel, at least seven days before the date on which the memorandum must be filed.

(3) **Affidavit**. An affidavit must not contain legal arguments, but must contain factual and procedural background relevant to the motion it supports. Except for motions brought under Federal Rules of Civil Procedure 12(b)(1) (lack of subject matter jurisdiction), 12(b)(6) (failure to state a claim), 12(c) (judgment on the pleadings), and 12(f) (to strike), motions and opposition to motions shall be supported by at least one affidavit and by such other evidence (e.g., deposition testimony, interrogatory answers, admissions, and documents) as appropriate to resolve the particular motion. Failure to comply with this requirement may constitute grounds for resolving the motion against the non-complying party.

(4) **Supporting Material**. A party seeking or opposing any relief under the Federal Rules of Civil Procedure shall file only the portion(s) of a deposition, interrogatory, request for documents, request for admission, or other supporting material that is pertinent to the application.

(5) **Summary Judgment**. *See* L.R. Civ. P. 56 for additional provisions specific to summary judgment motions.

(6) **Sur-Reply**. Absent permission of the Judge hearing the motion, sur-reply papers are not permitted.

(7) **Courtesy Copy**. Immediately after filing a motion for an expedited hearing (L.R. Civ. P. 7(d)(1)), or motion for a temporary restraining order (L.R. Civ. P. 65(a)), the moving party must deliver a courtesy copy of the motion papers

to the chambers of the assigned Judge. The Court may, in its discretion, request courtesy copies on any other motion.

(8) **Service of Unpublished Decisions**. In cases involving a *pro se* litigant, counsel shall, when serving a memorandum of law (or other submissions to the Court), provide the *pro se* litigant (but not other counsel or the Court) with printed copies of decisions cited therein that are unreported or reported exclusively on computerized databases.

(b) **Briefing Schedules**.

(1) **Court Order**. After a motion is filed, the Court may issue an order setting deadlines for filing and service of opposing papers, and for filing and service of reply papers if the moving party has stated an intent to reply.

(2) **Absent Court Order**. If the Court does not set deadlines by order, the following schedules shall apply:

(A) **Summary Judgment Motions**. The opposing party shall have twenty-eight days after service of the motion to file and serve responding papers, and the moving party shall have fourteen days after service of the responding papers to file and serve reply papers. If the party opposing the original motion files a cross-motion, the moving party shall have twenty-eight days after service of the cross-motion to file and serve responding papers in opposition to the cross-motion, and the party filing the cross-motion shall have fourteen days after service of the responding papers to file and serve reply papers in support of the cross-motion.

(B) **All Other Motions**. The opposing party shall have fourteen days after service of the motion to file and serve responding papers, and the moving party shall have seven days after service of the responding papers to file and serve reply papers.

(c) **Oral Argument**. The parties shall appear for oral argument on all motions they make returnable before a Judge on the scheduled return date for the motion. In its discretion, the Court may notify the parties that oral argument shall not be heard on any given motion. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument.

(d) **Procedures for Specific Motions**.

(1) **Motion for an Expedited Hearing**. A party seeking to shorten the schedule prescribed in subparagraph (b) must make a motion for an expedited hearing, setting forth the reasons why an expedited hearing is required. The motion must be accompanied by:

(A) the motion the party is seeking to have heard on an expedited basis, together with supporting affidavits and memorandum of law; and

(B) a proposed order granting an expedited hearing, with dates for serving the motion, filing responsive papers, and for a hearing left blank to be filled in by the Court.

A motion for an expedited hearing may, for good cause shown, be made *ex parte*. Papers in support of an *ex parte* application shall state the attempts made to resolve the dispute through a motion on notice and/or state why notice of the motion may not be given.

Immediately after filing the motion for an expedited hearing (and accompanying documents), counsel for the moving party shall personally deliver courtesy copies of the motion papers to chambers and await further instructions from the Court. If the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement.

(2) **Motion to Settle an Order**. When counsel are unable to agree on the form of a proposed order, the prevailing party may move, upon seven days notice to all parties, to settle the order. The Court may award costs and attorney's fees against an attorney if it determines that the attorney's unreasonable conduct necessitated bringing the motion.

(3) **Motion for Reconsideration or Reargument**. A motion for reconsideration or reargument, unless governed by Federal Rule of Civil Procedure 60, shall be treated as falling within the scope of Federal Rule 59(e). Thus, the motion must be filed and served no later than twenty-eight days after the entry of the challenged judgment, order, or decree and, pursuant to Federal Rule 6(b)(2), no extension of time will be granted. The motion will be decided on the papers, absent a Court order scheduling oral argument.

(4) **Discovery Motion**. No motion for discovery and/or production of documents under Federal Rule of Civil Procedure 37 shall be heard unless accompanied by an affidavit showing that sincere attempts to resolve the discovery dispute have been made. Such affidavit shall detail the times and places of the parties' meetings or discussions concerning the discovery dispute and the names of all parties participating therein, and all related correspondence must be attached.

(5) **Motion to Expand Record On Appeal**. A party who seeks to include material that was not previously filed in a record on appeal must obtain a Court order directing the Clerk to file the material. The order can be sought by motion or by stipulation of all counsel/parties.

RULE 9

REQUIREMENT TO FILE A RICO CASE STATEMENT

Any party asserting a claim, cross-claim, or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*., shall file and serve a "RICO Case Statement" under separate cover. This statement shall be filed contemporaneously with the papers first asserting the party's RICO claim, cross-claim or counterclaim, unless the Court grants an extension of time for filing. A party's failure to file a RICO Case Statement may result in dismissal of the party's RICO claim, cross-claim, or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall conform to the format and numbering that the Court has adopted by Standing Order No. 22.

RULE 10

FORM OF PAPERS

(a) **Form Generally**. All pleadings, motions, and other papers that a party presents for filing, whether in paper form or in electronic form, shall meet the following requirements:

(1) all text and footnotes shall be in a font size of at least 12-point type;

(2) all text in the body of the document must be double-spaced, except that text in block quotations and footnotes may be single-spaced;

(3) extensive footnotes and block quotes may not be used to circumvent page limitations;

(4) documents must have one-inch margins on all four sides; and

(5) pages must be consecutively numbered.

(b) **Additional Requirements for Paper Filing.** Documents presented for filing in paper form shall meet the following additional requirements:

(1) documents must be on durable white 8½" x 11" paper of good quality;

(2) all text must be plainly and legibly written, typewritten, printed or reproduced;

(3) documents must be in black or blue ink;

(4) the pages of each document must be stapled or in some other way fastened together;

(5) all documents must be single-sided; and

(6) documents presented for paper filing must contain an original signature.

The Court may reject documents that do not comply with these requirements.

RULE 11

SANCTIONS

(a) **Dismissal or Default**. Failure of counsel for any party, or a party proceeding *pro se*, to appear before the Court at a conference, to complete the necessary preparations, or to be prepared to proceed to trial at the set time may be considered an abandonment of the case or a failure to prosecute or defend diligently. An appropriate order for sanctions may be entered against the defaulting party with respect to either a specific issue or the entire case.

(b) **Imposition of Costs on Attorneys**. Upon finding that sanctions pursuant to section (a) would be inadequate or unjust to the defaulting party, the Judge may, in accordance with 28 U.S.C. § 1927, assess reasonable costs directly against counsel whose action has obstructed the effective administration of the Court's business.

(c) **Assessment of Jury Costs**. In any civil case in which a settlement is reached, or in which the Court is notified of settlement later than the close of business on the last business day before jurors are to appear for jury selection, the Court, in its discretion, may impose the Court's costs of compensating jurors for their needless appearance against one or more of the parties, or against one or more counsel. Funds so collected shall be deposited by the Clerk into the Treasury of the United States.

RULE 15

AMENDING PLEADINGS

(a) A movant seeking to amend or supplement a pleading must attach an unsigned copy of the proposed amended pleading as an exhibit to the motion. The proposed amended pleading must be a complete pleading superseding the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

(b) Unless the movant is proceeding *pro se*, the amendment(s) or supplement(s) to the original pleading shall be identified in the proposed pleading through the use of a word processing "red-line" function or other similar markings that are visible in both electronic and paper format.

(c) The granting of the motion does not constitute the filing of the amended pleading. Unless the order granting leave to amend or supplement contains a different deadline, the moving party

must file and serve the amended pleading within fourteen days of entry of the order granting the motion. If the moving party is proceeding *pro se*, the Clerk of Court will file the amended pleading upon granting of the motion.

RULE 16

ALTERNATIVE DISPUTE RESOLUTION AND PRETRIAL CONFERENCES

(a) **Alternative Dispute Resolution**. This Court has adopted an Alternative Dispute Resolution Plan ("ADR"), as implemented by Standing Order, under which certain civil cases are referred automatically to ADR upon filing. The Clerk of Court will provide notice to the parties when a case is automatically referred. Any civil case that is not automatically referred may be referred to ADR by order of the presiding Judge, in his or her discretion. The ADR process is confidential. Litigants in cases not referred automatically to ADR must consider possible agreement to the use of an ADR process.

(b) **Initial Pretrial Conference**.

(1) **Purpose**. The Court shall hold an initial pretrial conference in all cases except those exempted from initial disclosure requirements under Federal Rule of Civil Procedure 26(a)(1)(B). The purpose of this conference is to establish a case management plan.

(2) **Party Conference**. Prior to the initial pretrial conference, counsel for all parties and any *pro se* litigants shall confer as required by Federal Rule of Civil Procedure 26(f), and shall file with the Court a joint, written discovery plan consistent with Federal Rule of Civil Procedure 26(f). If they are unable to agree to a plan, each party shall file its own proposed plan.

(A) **Electronically Stored Information**. The Court expects the parties to cooperatively reach agreement on how to conduct discovery of electronically stored information ("ESI").[1] Prior to the Federal Rule of Civil Procedure 26(f) conference, counsel should become knowledgeable about their clients' information management systems and their operation, including how information is stored and retrieved. In addition, counsel should make a reasonable attempt to ascertain the contents of their client's ESI, including backup, archival, and legacy data (outdated formats or media) and ESI that may not be reasonably accessible. In particular, prior to or at the Federal Rule of Civil Procedure 26(f) conference, the parties should confer regarding the following matters:

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[1] Except for the term "document," which is defined at L.R. Civ. P. 26(d)(3)(B), the Court will rely on The Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition), for definitions of terms related to discovery of ESI.

(I) **Preservation**. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation.

(ii) **E-mail Information**. Counsel should attempt to agree on the scope of e-mail discovery and e-mail search protocol.

(iii) **Back-up and Archival Data**. Counsel should attempt to agree on whether responsive back-up and archival data exists, the extent to which back-up and archival data is reasonably accessible, and who will bear the cost of obtaining such data.

(iv) **Format and Media**. Counsel should attempt to agree on the format and media to be used in the production of ESI, and whether production of some or all ESI in paper form is agreeable in lieu of production in electronic format.

(v) **Reasonably Accessible Information and Costs**. Counsel should attempt to determine if any responsive ESI is not reasonably accessible, i.e., is accessible only by incurring undue burdens or costs.

(B) **Privileged or Trial Preparation Materials.** Counsel also should attempt to reach agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed.

(3) **Content of the Initial Conference**. In addition to all of the matters in Federal Rule of Civil Procedure 16(c)(2), counsel and unrepresented parties shall be prepared to discuss meaningfully the following:

(A) if the case is referred automatically to ADR pursuant to the Court's Alternative Dispute Resolution Plan, selection of a neutral, and timing for ADR;

(B) if the case is not referred automatically to ADR, possible stipulation to the use of a confidential ADR process;

(C) any problems currently known and reasonably anticipated to arise in connection with discovery of ESI;

(D) proposed methods to limit and/or decrease the time and expense of discovery;

(E) the use of experts during discovery and at trial; and

(F) the willingness to consent to the Magistrate Judge conducting any or all proceedings in the case.

(4) **Scheduling Order**. After the initial pretrial conference, pursuant to Federal Rule of Civil Procedure 16(b), the Court shall issue an order providing:

(A) deadlines for joinder of parties and amendment of pleadings;

(B) a date for a first judicial settlement conference, or, if the case will proceed to ADR, deadlines for an initial ADR session and the conclusion of ADR;

(C) a discovery cut-off date;

(D) a deadline for filing dispositive motions;

(E) deadlines for the disclosure of expert witnesses, if applicable; and

(F) any other matter decided or agreed upon at the initial pretrial conference.

A scheduling order cannot be modified except by Court order.

(c) **Settlement Conferences**.

(1) **Applicable Cases**. Unless a case will proceed to ADR, the Court's scheduling order will include a date for a first judicial settlement conference.

(2) **Party Obligations**. The plaintiff(s) shall provide the defendant(s) with a written settlement demand at least fourteen days before the first settlement conference, and the defendant(s) shall respond to the demand in writing at least seven days before the conference, so that the parties and their attorneys have a meaningful opportunity to consider and discuss the settlement proposals. In cases involving insurance coverage, defense counsel also shall consult with the insurance carrier prior to the conference regarding its position. Judges may, at their discretion, require a preconference, written submission from each party.

(3) **Attendance**. At the settlement conference, the attorneys shall be present and shall be prepared to state their clients' respective positions to the Court. Judges may, at their discretion, require the attendance of parties, party representatives, insurance carriers, and others whose attendance they believe may facilitate settlement, either in person or by telephone.

(4) **Further Settlement Conferences**. If a settlement is not reached at the first conference, the Court may schedule additional settlement conferences from time to time, as appropriate.

(d) **Additional Pretrial Conferences**. The Court may schedule additional pretrial conferences in its discretion, or at a party's request. Counsel and *pro se* litigants shall be prepared to provide a status update on discovery, motion practice, and the prospects for settlement.

(e) **Final Pretrial Conference**.

(1) **Timing and Content**. A final pretrial conference shall be held at the direction of the Court within thirty days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(A) the possibility of settlement;

(B) motions *in limine*;

(C) the resolution of any legal or factual issues raised in the pre-trial statement of any party (see subsection 2);

(D) stipulations (which shall be in writing); and

(E) any other matters that counsel or the Court deems appropriate.

(2) **Pretrial Statement**. No later than fourteen days before the date of the final pretrial conference, or by such other date as may be set by Court order, counsel for each party shall file and serve a pretrial statement which includes the following:

(A) a detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;

(B) a detailed statement of the issues of law involved and any unusual questions relative to the admissibility of evidence, together with supporting authority;

(C) proposed jury instructions and verdict form, if any, which shall also be provided to chambers in WordPerfect format;

(D) the names and addresses of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony;

(E) a brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(F) a list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(G) a list of any deposition testimony to be offered in evidence;

(H) an itemized statement of each element of special damages and other relief sought; and

(I) such additional submissions as the Court directs.

(3) **Marking Exhibits.** Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence.

(4) **Post-Conference Order**. Following the final pretrial conference, a pretrial order may be entered as directed by the Court, and the case certified as ready for trial.

(f) **Attorneys' Binding Authority**. Each party represented by an attorney shall be represented at each Court conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

RULE 23

CLASS ACTIONS

(a) The title of any pleading purporting to commence a class action shall bear the legend "Class Action" next to its caption.

(b) After stating the jurisdictional grounds for the claims, the complaint (or other pleading asserting a claim for or against a class) shall set forth, under the heading "Class Action Allegations":

(1) the portion(s) of Federal Rule of Civil Procedure 23 under which it is claimed the action is properly maintainable as a class action; and

(2) appropriate allegations thought to justify the claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis on which the party or parties claim to adequately represent the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Federal Rule of Civil Procedure 23(b)(3), allegations thought to support the findings required by that subsection.

(c) Within sixty days after issue is joined in any class action, counsel for the parties shall meet with a District Judge or Magistrate Judge, who shall issue a scheduling order providing for orderly discovery. The initial scheduling order may address only discovery relevant to certification of the alleged class, with a further scheduling order to follow a determination on the certification motion.

(d) Within 120 days after the filing of a complaint alleging a class action, unless this period is extended in the scheduling order or on motion for good cause filed prior to the expiration of the120-day period, the party seeking class certification shall move for a determination under Federal Rule of Civil Procedure 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall include, but is not limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of the party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same defendant(s) that allege the same or similar causes of actions, about which the party or counsel seeking class action certification is personally aware;

(5) in cases where a notice to the class is required by Federal Rule of Civil Procedure 23(c)(2), a statement of what the proposed notice to class members should include and how and when the notice will be given, including a statement regarding security deposit for the cost of notices; and

(6) a statement of any other matters that the movant deems necessary and proper to expedite a decision on the motion and resolution of the case on the merits.

Responses to certification motions shall be in accordance with the requirements of these Local Rules.

(e) Failure to move for class determination and certification within the time required shall constitute an intentional abandonment and waiver of all class action allegations contained in the pleading, and the action shall proceed thereafter as an individual, non-class action. If any motion for class determination or certification is filed after the deadline provided herein, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon a finding of excusable neglect and good cause.

(f) In ruling upon a motion for class certification, the Court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement

of the determination pending further discovery or such other preliminary procedures as appear appropriate and necessary under the circumstances. Whenever possible, where the determination is ordered to be postponed, a date shall be fixed for renewal of the motion before the same Judge.

(g) The burden shall be on the party seeking to maintain a case as a class action to show that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(h) Counsel are governed by the New York Rules of Professional Conduct, as adopted from time to time by the Appellate Divisions of the State of New York, concerning contact with and solicitation of potential class members.

(I) No class action allegation shall be withdrawn, deleted, or otherwise amended without Court approval. Furthermore, no class action shall be compromised without court approval and notice of the proposed compromise shall be given to all members of the class in such manner as the Court directs.

(j) Six months from the date of issue having been joined, and every six months thereafter until the action is terminated, counsel in all class actions shall file a joint case status report indicating: whether any motions are pending, what discovery has been completed, what discovery remains, whether any settlement negotiations or ADR sessions have taken place and the likelihood of settlement, and whether the matter is ready for trial.

(k) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

RULE 26

GENERAL RULES GOVERNING DISCOVERY

(a) **Rule 26(f) Discovery Conference**. The parties shall confer about all of the matters contemplated by Federal Rule of Civil Procedure 26(f) and L.R. Civ. P. 16(a)(3), unless the case is excepted from this requirement by L.R. Civ. P. 16(a)(1).

(b) **Timing and Sequence of Discovery**. Subject to the requirements of Federal Rule of Civil Procedure 26(a)(1), a party may not seek discovery from any source prior to the Rule 26(f) conference, absent the parties' agreement or a Court order setting a discovery schedule.

(c) **Form of Interrogatories, Requests to Produce or Inspect, and Requests for Admission**. The parties shall sequentially number each interrogatory or discovery request. In addition to service pursuant to Federal Rule of Civil Procedure 5, the party to whom interrogatories or discovery requests are directed shall, whenever practicable, be supplied with an electronic courtesy copy of the served document in a word processing format. In answering or objecting

to interrogatories or discovery requests the responding party shall first state verbatim the propounded interrogatory or request, and immediately thereafter the answer or objection.

(d) **Uniform Definitions for all Discovery Requests**.

(1) The full text of the definitions and rules of construction set forth in subsections (3) and (4) is deemed incorporated by reference into all discovery requests. No discovery request shall use broader definitions or rules of construction than those set forth in subsections (3) and (4). This rule shall not preclude (a) the definition of other terms specific to the particular litigation, (b) the use of abbreviations, or (c) a more narrow definition of a term defined in subsection (3).

(2) This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

(3) The following definitions apply to all discovery requests:

(A) **Communication**. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(B) **Document**. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

(C) **Identify (with respect to persons)**. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subsubsection, only the person's name need be listed in response to subsequent discovery requesting the identification of that person.

(D) **Identify (with respect to documents)**. When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipients(s).

(E) **Parties**. The terms "plaintiff" and "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(F) **Person**. The term "person" is defined as any natural person or any business, legal or governmental entity, or association.

(G) **Concerning**. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

(4) The following rules of construction apply to all discovery requests:

(A) **All/Each**. The terms "all" and "each" shall be construed as all and each.

(B) **And/Or**. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

(C) **Number**. The use of the singular form of any word includes the plural and vice versa.

(e) **Assertion of Claim of Privilege**.

(1) Where a party asserts a claim of privilege in objecting to any means of discovery or disclosure, and withholds otherwise responsive information based on that assertion:

(A) the party asserting the privilege shall identify the nature of the privilege (including work product) being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked; and

(B) shall provide the following information, unless to divulge such information would cause disclosure of the allegedly privileged information:

(i) for documents: (a) the type of document, *e.g.*, letter or memorandum; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other;

(ii) for oral communications: (a) the names of the person making the communication and the person(s) present while the communication was made and, where not apparent, the relationship of the person making the communication to the

person(s) present; (b) the date and place of communication; and (c) its general subject matter.

(2) Where the claim of privilege is asserted in response to discovery or disclosure other than at a deposition, the information set forth in subsection (1) shall be furnished in writing when the party responds to such discovery or disclosure, unless otherwise ordered by the Court.

(3) Where the claim of privilege is asserted during a deposition, the information set forth in subsection (1) shall be furnished: (a) at the deposition, to the extent it is readily available from the witness being deposed or otherwise, and (b) to the extent it not readily available, in writing within fourteen days after the privilege is asserted, unless otherwise ordered by the Court.

(f) **Electronically Stored Information**. Discovery of relevant electronically stored information shall proceed as follows:

(1) After receiving requests for document production, the parties shall search their documents, including ESI other than ESI that has been identified as not reasonably accessible, and produce relevant responsive ESI in accordance with Federal Rule of Civil Procedure 26(b)(2).

(2) Searches and production of ESI identified as not reasonably accessible shall not be required to be conducted until the initial disclosure of reasonably accessible ESI has been completed. Requests for information expected to be found in ESI that is not reasonably accessible must be narrowly focused with some basis in fact supporting the request, and good cause must be provided. The party seeking such discovery may be required to pay all or a portion of the costs of search, retrieval, review, and production of the information, upon application to the Court.

(3) **Search Methodology**. If a party intends to employ an electronic search to locate relevant ESI, the parties shall discuss and attempt to reach agreement as to the method of searching, and the words, terms, and phrases to be searched and any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the ESI. The parties shall also attempt to reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize undue expense, the parties may consider limiting the scope of the electronic search (e.g., time frames, fields, document types).

(4) **Metadata**. Except as otherwise provided, metadata, especially substantive metadata, need not be routinely produced, except upon agreement of the requesting and producing litigants, or upon a showing of good cause in a motion filed by the requesting party.

(5) **Format**. If the parties have not agreed or cannot agree to the format for document production, ESI shall be produced to the requesting party as image

files (e.g. PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of ESI in its native format.

(6) **Costs**. Generally, the costs of discovery, other than the costs associated with ESI that is not reasonably accessible, shall be borne by each party. However, the Court will apportion the costs of discovery or presentation of ESI, including discovery of ESI that is not reasonably accessible, upon a showing of good cause, or unequal burdens, or unreasonable request.

(g) **Non-filing of Discovery Materials**. Parties shall comply with Federal Rule of Civil Procedure 5(d)(1), except that in cases involving a *pro se* litigant, all discovery materials must be filed with the Court pursuant to L.R. Civ. P. 5.2(f).

(h) **Cooperation Among Counsel in the Discovery Context**. See the Civility Principles of the United States District Court for the Western District of New York.

RULE 29

STIPULATIONS

All stipulations, except stipulations made in open court and recorded by the court reporter, shall be in writing and signed by each attorney and/or *pro se* litigant. The parties shall determine who will be responsible for filing, and a copy of the stipulation, with signatures conformed (e.g. "s/Jane Doe," "s/John Smith"), shall be filed electronically. The Court will act on the filed stipulation, as necessary and appropriate.

RULE 30

DEPOSITIONS

(a) **Fair Notice**. Absent agreement of the parties or Court order, each notice to take the deposition of a party or other witness shall be served at least twenty-one days prior to the date set for examination.

(b) **Production of Documents in Connection with Depositions**. Consistent with the requirements of Federal Rules of Civil Procedure 30 and 34, a party seeking production of documents of another party or witness in connection with a deposition shall schedule the deposition to allow for production of the documents at least seven calendar days prior to the deposition. Upon receipt of the documents, the party noticing the deposition shall immediately inform counsel for all other noticed parties that the requested documents have

been produced and shall make the documents available for their inspection and reproduction. If timely requested documents are not produced at least seven days prior to the deposition, the party noticing the deposition may either adjourn the deposition until a minimum of seven days after the documents are produced or, without waiving the right to access to the documents, proceed with the deposition on the originally scheduled date.

c) **Procedures for Video Depositions**. A Court order is required before taking a deposition by other than stenographic means (i.e. without the use of a stenographic record). However, a prior order is not required to record a deposition both on video and stenographically. In the latter circumstance, the following procedures apply:

(1) The deposition notice shall state that the deposition will be recorded both stenographically and on video. At the deposition, the camera operator shall be identified. An employee of the attorney who noticed the deposition may act as the camera operator.

(2) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(3) Prior to trial, counsel for the party seeking to use the video deposition shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(4) The party seeking to use the video deposition at trial shall submit unresolved objections to the Court by way of a motion *in limine*. The motion may be made at any time after the deposition, but shall be made no later than seven days before trial or any earlier deadline established by Court order. The objected-to portion(s) of the transcript shall be annexed to the motion papers.

(5) In accordance with the Court's ruling on objections, the party seeking to use the video deposition shall notify opposing counsel of the transcript pages and line numbers the party plans to delete from the video. The party seeking to use the video shall then edit the video accordingly, and shall bear the expenses of editing. If the Court overrules an objection made during the deposition, the objection need not be deleted. If requested, the Court will give an instruction at the time the video is shown regarding objections heard on the video.

(6) At least three days before showing the video, the party seeking to use the video deposition at trial shall deliver a copy of the edited video to opposing counsel. Opposing counsel may then object only if the edited version does not comply with the Court's ruling and counsels' agreement, or if the video's quality is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the video is to be shown.

(7) The party seeking to use the video deposition should attempt to utilize a storage format compatible with the Court's display equipment. A party

utilizing an incompatible format must provide the equipment necessary to display the video in court.

(8) See L.R. Civ. P. 54(c) for prerequisites to the receipt of video expenses as a component of taxable costs.

RULE 41

DISMISSAL OF ACTIONS AND APPROVAL OF CERTAIN SETTLEMENTS

(a) **Voluntary Dismissal Upon Settlement**. When a case is settled, the parties shall, within fourteen days thereafter, file a stipulation of dismissal or other appropriate document (e.g., consent decree). If such document is not timely filed, the Judge may enter an order dismissing the case as settled, without costs, and on the merits. The Judge, in his or her discretion, may extend the time for filing.

(1) **Settlements of Actions on Behalf of Infants or Incompetents**.

(A) An action by or on behalf of an infant or an incompetent shall not be settled or compromised, voluntarily discontinued, dismissed, or terminated without application to and leave of Court. The proceeding upon application to settle or compromise such an action shall conform, as nearly as possible, to Sections 1207 and 1208 of New York's Civil Practice Law and Rules. The Judge may, for cause shown, dispense with any New York State requirement.

(B) The Judge shall determine whether the application requires a hearing and whether the infant or incompetent, together with his or her legal representative, must appear at the hearing.

(C) The Judge shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution, or otherwise, and shall determine such fee and disbursements after due inquiry as to all charges against the fund.

(D) The Judge shall order the balance of the proceeds of the settlement or recovery to be distributed pursuant to Section 1206 of New York's Civil Practice Law and Rules, or upon good cause shown, pursuant to such plan as the Judge deems necessary to protect the interests of the infant or incompetent.

(2) **Settlements of Actions Brought on Behalf of Decedents' Estates**.

(A) Actions brought on behalf of decedents' estates shall not be settled or compromised, or voluntarily discontinued, dismissed, or terminated,

without application to and leave of Court. The application to settle or compromise shall include a signed affidavit or petition by the estate representative and a signed affidavit by the representative's attorney addressing the following:

(i) the circumstances giving rise to the claim;

(ii) the nature and extent of the damages;

(iii) the terms of the proposed settlement, including the attorney's fees and disbursements to be paid out of the settlement;

(iv) the circumstances of any other claims or settlements arising out of the same occurrence; and

(v) the reasons why the proposed settlement is believed to be in the best interests of the estate and distributees.

(B) Counsel shall submit a proposed order approving the settlement.

(C) The Judge shall determine whether a hearing is necessary.

(D) Upon approving the settlement, attorney's fees, and disbursements, the Judge shall direct the estate representative to apply to the appropriate Surrogate of the State of New York, or analogous jurist of another state, for an order of distribution of the net proceeds of the settlement pursuant to Section 5-4.4 of New York's Estate Powers and Trusts Law or the analogous provision of the appropriate state's law.

(b) **Involuntary Dismissal.** If a civil case has been pending for more than six months and is not in compliance with the directions of the Judge or a Magistrate Judge, or if no action has been taken by the parties in six months, the Court shall issue a written order to the parties to show cause within thirty days why the case should not be dismissed for failure to comply with the Court's directives or to prosecute. The parties shall respond to the order by filing sworn affidavits explaining in detail why the action should not be dismissed. They need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be accepted. If the parties fail to respond, the Judge may issue an order dismissing the case, or imposing sanctions, or issuing such further directives as justice requires.

RULE 47

JURY TRIALS - CIVIL ACTIONS

(a) Random selection of petit jurors is made pursuant to the Jury Plan for the Western District of New York as approved by the Second Circuit Judicial Council.

(b) The Judge in a civil case shall examine prospective jurors on *voir dire*. Counsel may submit proposed questions in writing to the Judge or Magistrate Judge prior to or during the *voir dire* examination. The Judge or Magistrate Judge, in his or her discretion, may permit counsel to submit questions orally or conduct *voir dire*.

(c) Where a jury trial has been properly demanded, the Court shall determine whether the jury will be selected by the panel method or the struck method.

(d) The procedure for selecting the jury pursuant to the panel method shall be as follows:

(1) The deputy will at random call names from the available panel and direct those persons to be seated in the jury box in the order in which they are called. The total number to be seated shall be determined by the Court.

(2) The Court will conduct *voir dire*. If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges, pursuant to 28 U.S.C. § 1870. These challenges shall be exercised in three rounds, one challenge for each side in each round. If a challenge is not exercised by either party for that round, it is waived. After each round of challenges is exercised, the Clerk shall call names from the panel to replace the challenged jurors. After new jurors are seated, the procedure in L.R. Civ. P. 47(d)(2)-(5) shall be repeated. At any time before the panel is sworn, a party may exercise a challenge as to any juror seated in the box.

(6) After all parties have exercised all of their challenges, the jury shall be sworn.

(e) The procedure for selecting a jury pursuant to the struck method shall be as follows:

(1) The deputy will call at random from the panel a number of prospective jurors equal to the total number of all jurors and all peremptory challenges for all

parties in the action. Those persons will be seated in the jury box in the order they are called.

(2) The Court will conduct *voir dire*. If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges pursuant to 18 U.S.C. § 1870. These challenges shall be exercised in rounds, one challenge for each side in each round. No further jurors will be called to replace those jurors excused by peremptory challenges. At the conclusion of the parties' rounds, the Court shall announce those jurors who shall constitute the jury, and they shall be sworn.

(f) In a case with multiple defendants or plaintiffs, the attorneys for defendants or plaintiffs shall confer and jointly exercise their peremptory challenges. No additional peremptory challenges shall be provided solely because the case involves more than one defendant or plaintiff.

RULE 54

COSTS

(a) Within thirty days after entry of final judgment, a party entitled to recover costs shall submit to the Clerk a verified Bill of Costs on the form provided by the Court.

(b) Subject to the provisions of Federal Rule of Civil Procedure 54(d)(1), the expense in obtaining all or any part of a transcript for the Court's use when ordered by it, and the expense in obtaining all or any part of a transcript for purposes of a new trial, for amended findings, or for appeal, shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference of the United States.

(c) If a party proceeds to record a deposition stenographically and on video pursuant to L.R. Civ. P. 30, the additional costs incurred for video recording will not be taxed by the Clerk without a prior order from the Court or agreement of the parties.

(d) Unless otherwise ordered by the District Court, or the Circuit Court of Appeals pursuant to Federal Rule of Appellate Procedure 8, the filing of an appeal shall not stay the taxation of costs, entry of judgment thereon, or enforcement of the judgment.

RULE 55

DEFAULT JUDGMENT

(a) **By the Clerk**. A party entitled to entry of default by the Clerk, pursuant to Federal Rule of Civil Procedure 55(b)(1), shall submit to the Clerk in paper form:

(1) a proposed judgment containing the last known address of each judgment creditor and judgment debtor and, if any such address is unknown, an affidavit by the party seeking default judgment or the party's attorney stating that the affiant has no knowledge of the address;

(2) a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed; and

(3) appended to the statement, an affidavit by the party seeking default judgment or the party's attorney showing that:

(A) the party against whom judgment is sought is not an infant or an incompetent person;

(B) the party has defaulted in appearance in the action;

(C) the amount shown by the statement is justly due and owing and no part thereof has been paid except as therein set forth; and

(D) the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein.

Upon confirming the submission is in compliance with the Federal and Local Rules, the Clerk shall enter judgment for principal, interest, and costs.

(b) **By the Court**. An application to the Court for the entry of a default judgment, pursuant to Federal Rule of Civil Procedure 55(b)(2), shall reference and include the docket numbers of the Clerk's entry of default and the pleading to which no response has been made.

RULE 56

STATEMENTS OF FACTS ON MOTION FOR SUMMARY JUDGMENT

(a) **Statements of Facts on Motion for Summary Judgment.**

(1) **Movant's Statement.** Upon any motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, there shall be annexed to the notice of motion a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.

(2) **Opposing Statement.** The papers opposing a motion for summary judgment shall include a response to each numbered paragraph in the moving party's statement, in correspondingly numbered paragraphs and, if necessary, additional paragraphs containing a short and concise statement of additional material facts as to which it is contended there exists a genuine issue to be tried. Each numbered paragraph in the moving party's statement of material facts will be deemed admitted for purposes of the motion unless it is specifically controverted by a correspondingly numbered paragraph in the opposing statement.

(3) **Citations.** Each statement by the movant or opponent pursuant to this Local Rule must be followed by citation to evidence that would be admissible, as required by Federal Rule of Civil Procedure 56(e). Citations shall identify with specificity the relevant page and paragraph or line number of the authority cited.

(4) **Appendix.** All cited evidence, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents, that has not otherwise been filed in conjunction with the motion shall be filed as an appendix to the statement of facts prescribed by subsections (1) or (2), *supra*, in conformity with Federal Rule of Civil Procedure 56(e)(1), and denominated "Plaintiff's/Defendant's Appendix to Local Rule 56 Statement of Material Facts."

(b) **Notice to *Pro Se* Litigants.** Any party moving for summary judgment against a *pro se* litigant shall file and serve with the motion papers a "Notice to *Pro Se* Litigant Regarding Rule 56 Motion For Summary Judgment" in the form provided by the Court. Failure to file and serve the form notice shall result in denial of the motion, without prejudice to proper renewal. Where the *pro se* party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact.

RULE 58

SATISFACTION OF JUDGMENTS

Satisfaction of a money judgment recovered or registered in this District shall be entered by the Clerk as follows:

(a) upon the payment of the judgment into the registry of the Court, but such payment may only be made pursuant to a prior Court order authorizing such payment;

(b) upon the filing of a satisfaction executed and acknowledged by:

(1) the judgment creditor; or

(2) his or her legal representatives or assigns, with evidence of their authority; or

(3) his or her attorney, if within five years of the entry of the judgment or decree.

(c) upon the filing of a satisfaction executed by the United States Attorney, if the judgment creditor is the United States; or

(d) upon the registration of a certified copy of a satisfaction entered in another District.

RULE 65

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

(a) **Temporary Restraining Orders (TRO)**. An Order to Show Cause is not specifically authorized under the Federal Rules of Civil Procedure. Such relief is available upon motion for a TRO, pursuant to Federal Rule of Civil Procedure 65, and a motion for an expedited hearing, pursuant to L.R. Civ. P. 7(d)(1). There are two types of TROs: an *ex parte* TRO and a TRO issued upon notice to the adverse party. An *ex parte* TRO is available only in extraordinary circumstances. In most cases, the Court will require both notice to the adverse party and an opportunity to be heard before granting a TRO.

(1) ***Ex Parte* TRO**. A party seeking an *ex parte* TRO must comply with the requirements of Federal Rule of Civil Procedure 65(b)(1) and (2). An application for an *ex parte* TRO also shall include:

(A) a copy of the complaint, if the case has been recently filed;

(B) the motion for a TRO;

(C) a memorandum of law in support of the TRO, citing legal authority showing that the party is entitled to the relief requested; and

(D) a proposed order granting the TRO, in accordance with Federal Rule of Civil Procedure 65(b)(2) and (d)(1).

Immediately after filing the TRO application, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement. Because an application for a TRO rarely will be granted *ex parte*, a party moving under this subsection should be prepared to proceed pursuant to subsection (2) below, in the event that the Court finds that an *ex parte* proceeding is unwarranted.

(2) **TRO on Notice**. An application for a TRO on notice shall include:

(A) all the documents required by subsection (1)(A), (B), (C) and (D) above; and

(B) a motion for an expedited hearing pursuant to L.R. Civ. P. 7(d)(1).

Immediately after filing the TRO application, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement.

(b) **Preliminary Injunction**. A preliminary injunction will only issue after notice and hearing, unless there is a waiver. An application for a preliminary injunction shall include:

(1) a copy of the complaint, if the case has been recently filed;

(2) the motion for a preliminary injunction;

(3) a memorandum of law in support of the motion citing legal authority showing that the moving party is entitled to the relief requested;

(4) a list of witnesses and exhibits to be presented at the preliminary injunction hearing, and a brief summary of the anticipated testimony of such witnesses; and

(5) a proposed order granting the injunctive relief.

Additionally, if the moving party seeks to have the motion heard on an expedited basis, such party shall include a motion for an expedited hearing pursuant to L.R. Civ. P. 7(d)(1).

(c) **Security**. The parties shall be prepared to address the security requirements of Federal Rule of Civil Procedure 65(c) whenever applying for injunctive relief.

RULE 72

REVIEW OF MAGISTRATE JUDGES' ACTIONS

All civil cases shall be assigned by the Clerk to a District Judge and a Magistrate Judge. The District Judge may designate the Magistrate Judge to conduct pre-trial procedures, and perform some or all duties conferred upon Magistrate Judges by 28 U.S.C. § 636(b). Requests for review of a Magistrate Judge's action shall be made in accordance with the Federal Rules and the following:

(a) **Nondispositive Matters**. All orders of the Magistrate Judge authorized by 28 U.S.C. § 636(b)(1)(A) shall be final unless a party timely files written objections. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out in the objections.

(b) **Dispositive Motions and Prisoner Petitions**. Written objections to proposed findings of fact and recommendations for disposition submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority. A party seeking additional time to file objections must file a motion for an extension of time with the District Judge within 14 days after being served with the Magistrate Judge's recommended disposition.

(c) **Certification.** Any party filing objections to a Magistrate Judge's order or recommended disposition must include with the objections to the District Judge a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and explaining why they were not raised to the Magistrate Judge.

RULE 73

CONSENT TO A MAGISTRATE JUDGE

(a) **Consent.** In accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, a Magistrate Judge may conduct any or all proceedings in a civil action, including a jury or non-jury trial, upon the consent of all parties. Consent is voluntary, and the parties are free to withhold consent without adverse substantive consequences.

(b) **Notice, Execution, and Approval**. The Clerk of Court shall provide the parties written notice of the right to consent and the appropriate consent form(s). The completed form(s) shall be submitted to the Clerk, who, upon confirming that all parties have consented, will transmit the form(s) to the assigned District Judge for approval.

(A) For cases in which the parties are represented by counsel, plaintiff's counsel is responsible for submitting to the Clerk a single consent form, executed by all parties or their attorneys. The Clerk will reject and return a consent form that is not signed by all of the parties or their respective counsel.

(B) For cases in which one or more of the parties is proceeding *pro se*, the Clerk shall provide a separate consent form to each party. Each party is required to complete and return the form pursuant to the instructions provided.

(c) **Additional Parties.** Any party added to an action after the original parties' consent is approved by the assigned District Judge, shall be notified by the Clerk of the right to consent to proceed before the Magistrate Judge. If the new party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the District Judge for further proceedings.

RULE 76

BANKRUPTCY APPEALS; DISMISSAL FOR FAILURE TO PERFECT

If the appellant fails to perfect the appeal in the manner prescribed by Federal Rule of Bankruptcy Procedure 8006, the Bankruptcy Court Clerk shall notify the District Court Clerk of the noncompliance and shall forward to the District Court the notice of appeal, a copy of the order or judgment appealed from, a copy of the docket, and such other papers as the Bankruptcy Court Clerk deems relevant. When the partial record has been filed, the District Court may, upon motion of the appellee or upon its own initiative, dismiss the appeal for noncompliance with Federal Rule of Bankruptcy Procedure 8006.

RULE 79

EXHIBITS

(a) All exhibits offered by any party at trial, whether or not received as evidence, shall be retained after each day of trial by the party or attorney offering the exhibits, unless the Court orders otherwise. Immediately after the case is submitted to the trier of fact, all exhibits received into evidence shall be delivered to the courtroom deputy. After a verdict is rendered, responsibility for custody of all exhibits reverts back to the parties.

(b) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file electronically any exhibits to be transmitted to the appellate court as part of the record on appeal. Documents that cannot be filed electronically, and physical exhibits other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(c) If any party receives notice from the Clerk concerning the removal of paper or other physical exhibits, and fails to do so within thirty days from the date of notice, the Clerk may destroy or otherwise dispose of those exhibits.

RULE 81

REMOVED ACTIONS

(a) **Required Documents in Cases Removed from State Court**. A party removing a civil action from state court to this Court must:

(1) submit a completed civil cover sheet;

(2) pay the requisite filing fee; and

(3) file a notice of removal with the following attachments:

(A) an index identifying each document filed and/or served in the state court action; and

(B) each document filed and/or served in the state court action, individually tabbed and arranged in chronological order, except that, consistent with Federal Rule of Civil Procedure 5(d)(1) and L.R. Civ. P. 5.2(f), discovery materials shall be filed only in *pro se* cases.

(4) The party filing the notice of removal or a designee shall declare, by affidavit or certification, that he or she has provided all other parties in the action with the notice of removal and attachments being filed with this Court.

(b) **Jury Demands in Removed Actions**. In any action removed to this Court, a party entitled to a trial by jury under Federal Rule of Civil Procedure 38 shall be afforded a jury trial if a demand is filed and served as provided by Federal Rule of Civil Procedure 81(c).

RULE 83.1

ATTORNEY ADMISSION TO PRACTICE

All documents and forms referenced in this Rule are available from the Clerk's offices in Buffalo and Rochester, and on the Court's webpage at www.nywd.uscourts.gov. Applicants who create their own documents must include all information required by the Court's documents and forms, in the same order.

(a) **Admission on Certificate of Good Standing.** A member in good standing of the bar of the United States District Court for the Southern, Eastern, or Northern District of New York may be permanently admitted to practice in this Court (as a "Member of the bar of this Court") upon submitting to the Clerk:

(1) a Certificate of Good Standing from the Clerk of the Court of which he or she is a member (dated no earlier than six months prior to submission to this Court);

(2) a check or money order in the amount of the Attorney Admission fee set forth in the District Court Schedule of Fees; and

(3) the following fully completed Court documents:

(A) Attorney's Oath;

(B) Civility Principles Oath;

(C) Attorney Database Information Form;

(D) Attorney CM/ECF Registration Form; and

(E) if the attorney or the firm with which the attorney is associated maintains an office in this District, a Required *Pro Bono* Service Form.

The date on which an attorney's submissions are filed by the Court shall be the recorded date of admission. Counsel will receive an admission certificate from the Clerk by U.S. mail.

(b) **Admission by Petition.** An attorney for whom 83.1(a) does not apply, and who is admitted to practice before the courts of New York State, or in a United States District Court outside of New York State, may be permanently admitted to practice in this Court (as a "Member of the bar of this Court") as follows:

(1) **Attorneys Admitted to Practice in New York State**.

(A) Counsel must submit to the Clerk, at least thirty days in advance of the desired time for admission, the following fully completed Court documents:

(i) Admission Petition Form;

(ii) Admission Sponsor Affidavit;

(iii) Attorney's Oath;

(iv) Civility Principles Oath;

(v) Attorney Database Information Form;

(vi) Attorney CM/ECF Registration Form; and

(vii) if the attorney or the firm with which the attorney is associated maintains an office in this District, a Required *Pro Bono* Service Form.

(B) On the day of admission, the attorney seeking admission shall:

(i) arrive at the Clerk's Office at least fifteen minutes before the scheduled time for admission to pay the Attorney Admission fee set forth in the District Court Schedule of Fees;

(ii) appear in person before the admitting Judge; and

(iii) be accompanied by a Member of the bar of this Court, who need not be the sponsoring attorney, to move the petitioning attorney's admission.

(2) **Attorneys Admitted to District Courts Outside New York State.** A member in good standing of any United States District Court and of the bar of the State in which the District Court is located may be admitted to membership without personal appearance, upon submitting to the Clerk:

(A) a Certificate of Good Standing from the Clerk of the Court of which he or she is a member (dated no earlier than six months prior to submission to this Court);

(B) a check or money order in the amount of the Attorney Admission fee set forth in the District Court Schedule of Fees;

(C) all fully completed documents listed in subdivision (b)(1)(A) of this Local Rule.

The date on which an attorney's submissions are filed by the Court shall be the recorded date of admission. Counsel will receive an admission certificate from the Clerk by U.S. mail.

(c) **Pro Hac Vice Admission.** An attorney who is not eligible for permanent admission under the foregoing provisions, or an attorney who, though eligible, does not wish to become a permanent Member of this Court, may be admitted *pro hac vice* to participate in a particular matter in which he or she is engaged. An applicant for admission *pro hac vice* must fully complete, and file with the Court, all documents listed in subdivision (b)(1)(A), along with submitting to the Clerk a check or money order in the amount of the *pro hac vice* fee set forth in the District Court Schedule of Fees. The Court, in its discretion, will issue an order granting or denying the petition.

(d) **Government Attorneys.** United States Attorneys, Assistant United States Attorneys, special attorneys appointed under 28 U.S.C. §§ 515 and 543, Federal Public Defenders, Assistant Federal Public Defenders, and any attorney employed by a federal agency, may practice before this Court on any matter within the scope of his or her employment by submitting to the Clerk

a CM/ECF Registration Form and filing a notice of appearance as required by L.R. Civ. P. 83.2(b).

(e) **Admission to Practice in Bankruptcy Matters.** Only attorneys admitted to practice in this District under subparagraphs (a)-(d) of this Rule may practice in bankruptcy matters before the District Judges or the Bankruptcy Judges of this District. The attorney shall certify knowledge of such sources and provisions of bankruptcy law and rule as the Bankruptcy Court shall require by local rule approved by this Court. The "local counsel" requirement of L.R. Civ. P. 83.2 shall not apply in bankruptcy matters unless otherwise directed by a District Judge or Bankruptcy Judge. This provision shall not apply to a student admitted under the Student Practice Rule of the Bankruptcy Court.

(f) ***Pro Bono* Service**. Every Member of the bar of this Court who maintains, or whose firm maintains, an office in this District, shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. Appointments under this Rule shall be made in a manner such that no Member shall be requested to accept more than one appointment during any twelve-month period.

(g) **Assigned Counsel Expenses.** An attorney appointed *pro bono* pursuant to this Rule, who is unsuccessful in obtaining counsel fees, may apply to the Court for reimbursement for expenses incident to representing the indigent client(s). Reimbursement will be permitted to the extent possible in light of available resources and pursuant to the Amended Plan for the Administration of the District Court Fund. on file with the Clerk.

(h) **Changes to Attorney Information.** All attorneys admitted as a Member of this Court must advise the Clerk in writing of any change in name, firm affiliation, office address, or telephone number within thirty days of such change. Additionally, counsel must identify all pending cases on which he or she will remain counsel of record.

RULE 83.2

ATTORNEYS OF RECORD - APPEARANCE AND WITHDRAWAL

Except as provided by L.R. Civ. P. 83.1 and this Rule, only Members in good standing of the bar of this Court may appear as attorneys of record.

(a) **Appearance by Attorneys from Outside this District.**

(1) An attorney who is not a Member of the bar of this Court may appear in an action only if he or she applies to become *pro hac vice* counsel pursuant to L.R. Civ. P. 83.1. *Pro hac vice* attorneys who do not maintain an office in this District must obtain local counsel. "Local counsel" under these Local Rules is defined as a Member of the bar of this Court who maintains an office in this District, with whom the Court and opposing counsel may readily meet and communicate regarding the conduct of this case. A *pro hac vice* attorney who wishes to be relieved of the local counsel requirement must make a motion for

waiver within thirty days of his or her initial filing. Waiver may be granted in the Court's discretion.

(2) Attorneys appearing on behalf of the United States or a department or agency thereof, and Members of this Court in good standing but not maintaining an office in the District, may appear without local counsel unless otherwise directed by the Court.

(3) An attorney who is not a Member of the bar of this Court may sign pleadings in accordance with Federal Rules of Civil Procedure 11 and 26(g).

(b) **Notice of Appearance.** No notice of appearance is required of an attorney whose name and address appear at the end of a complaint, notice of removal, pre-answer motion, or answer. In all other circumstances, an attorney appearing for a party in a civil case shall promptly file a written notice of appearance.

(c) **Substitution of Counsel.** To change the attorney of record on a case, the new attorney of record shall file a Notice of Substitution of Counsel, even if the new attorney of record is in the same law firm as the former attorney of record. The Notice of Substitution of Counsel shall identify the new counsel of record; state counsel's address, telephone number and e-mail address; identify the former counsel of record; and affirm that the party substituting counsel has knowledge of and is in agreement with the change.

(d) **Attorney Withdrawal.** An attorney who has appeared as attorney of record may withdraw only by Court order, or by stipulation, in accordance with the following:

(1) An attorney of record may file and serve a Motion to Withdraw as Attorney. If the attorney wishes to submit his or her reasons for withdrawal *in camera*, he or she must so state in the Notice of Motion. The moving attorney then must submit any *in camera* document(s) to the Judge, and must serve such documents on his or her client. The Court may grant the motion upon a finding of good cause.

(2) An attorney may withdraw upon a stipulation endorsed by the client and by all counsel of record and unrepresented parties in the case. The stipulation shall be effective when signed by the Clerk of Court.

RULE 83.3

DISCIPLINE OF ATTORNEYS

(a) Attorneys practicing in this Court shall faithfully adhere to the New York Rules of Professional Conduct. In interpreting the New York Rules of Professional Conduct, absent binding authority from the United States Supreme Court or the United States Court of Appeals for the Second Circuit or significant federal interests, this Court, in the interests of comity and

predictability, will give due regard to decisions of the New York Court of Appeals and other New York State courts.

(b) In addition to any other sanctions imposed under these Local Rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after hearing. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise, or assist as to grievances or complaints from any source and as to applications by attorneys for relief from sanctions. Other than provided by subparagraphs (b) and (c) of this Rule, no censure, sanction, suspension, or disbarment shall be applied without notice and an opportunity to be heard and the approval of a majority of the District Judges of the Court in both active and senior service, except that any Judge of this Court may, for cause, revoke an admission *pro hac vice* he or she previously granted. Complaints or grievances, and any related documents, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the Court, and the Court, in its discretion, shall determine whether the order will be made available to the public, or published, or circulated.

(c)

(1) Any Member of the bar of this Court who is convicted of a felony, as defined in subsection (b)(3), must submit the record of conviction to the Clerk of Court within thirty days thereafter. When the Court is informed of the conviction, by the Member or otherwise, the Chief Judge will issue an order suspending that attorney from practice before this Court. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of suspension must be filed with the Clerk within thirty days from issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the suspension when it is in the interest of justice to do so.

(2) When the Court is informed that a judgment of conviction for a felony, as defined in subsection (b)(3), is final, the Chief Judge will order that the attorney's name be struck from the roll of Members of the bar of this Court. "Final" for purposes of this subsection means either that the time within which to appeal has lapsed or that the judgment of conviction for a felony has been affirmed on direct appeal. The order of disbarment shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of disbarment must be filed with the Clerk within thirty days from issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the disbarment when it is in the interest of justice to do so.

(3) For purposes of this subsection, the term felony shall mean any criminal offense classified as a felony under federal law; any criminal offense classified as a felony under New York law; or any criminal offense committed in any other state, commonwealth, or territory of the United States and classified as

a felony therein which, if committed within New York State, would constitute a felony in New York State.

(d) Any Member of the bar of this Court who has been suspended, disbarred, or disciplined in any way in any district, state, commonwealth, or territory, or who has resigned from the bar of any such court while an investigation into allegations of misconduct by the attorney was pending, must notify the Clerk of such action, in writing, within thirty days thereafter, and must submit with the notification a copy of any order issued in the other jurisdiction.

Upon receipt of a copy of an order imposing discipline, the Chief Judge will issue an order disciplining the attorney to the same extent as imposed in the other jurisdiction. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order, along with the record of the underlying disciplinary proceeding, must be filed with the Clerk within thirty days from issuance of the order. A majority of the active and senior District Judges may set aside the order when an examination of the record resulting in that discipline discloses, by clear and convincing evidence, that:

(1) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject; or

(3) this Court's imposition of the same discipline would result in grave injustice.

(f) A disbarred or suspended attorney who seeks reinstatement to practice before this Court must reapply for admission in accordance with L.R. Civ. P. 83.1.

RULE 83.4

CONTEMPTS

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Federal Rules of Civil Procedure 37(b)(1) and 37(b)(2)(A), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit upon which such notice of motion or order to show cause is based shall set forth with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. Reasonable attorney's fees necessitated by the contempt proceeding may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the attorney; otherwise, service shall be made personally, in the manner provided in Federal Rule of Civil Procedure 4 for the service of a summons. If an order to show cause is sought, such order may upon good cause shown embody a direction to the United States

Marshal to arrest the alleged contemnor and hold him or her in bail in an amount fixed by the order, conditioned upon his or her appearance at the hearing and upon his or her holding himself or herself amenable thereafter to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, he or she shall upon demand be entitled to have oral evidence taken on the issues, either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, he or she shall make a written demand therefor on or before the return day or adjourned day of the application; otherwise, he or she will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered:

(1) reciting or referring to the verdict or findings of fact upon which the adjudication is based;

(2) setting forth the amount of the damages to which the complainant is entitled;

(3) fixing the fine, if any, imposed by the Court, which fine shall include the damages found, and naming the person to whom such fine shall be payable;

(4) stating any other conditions, the performance of which will operate to purge the contempt; and

(5) directing the arrest of the contemnor by the United States Marshal, and his or her confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law.

The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him or her, he or she shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for his or her costs and disbursements and a reasonable counsel fee.

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) Except as provided by order of the Chief Judge or by subparagraph (b), no person, other than Court officials engaged in the conduct of court business and/or responsible for the security or maintenance of Court facilities, shall bring any camera, transmitter, receiver, recording device, cellular telephone, or other personal electronic device into the District's Courthouses.

(b) Any Judge presiding over a ceremonial proceeding (e.g., naturalization ceremony, mock trial, judge's investiture) may, in his or her discretion, allow the use of cameras and other equipment during the proceeding.

RULE 83.6

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a Member of the bar of this Court;

(2) assume personal professional responsibility for the student's work;

(3) assist the student to the extent necessary;

(4) appear with the student in all proceedings before the Court; and

(5) indicate in writing his or her consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk or be terminated by the Judge presiding in the case in which the student appears without notice, hearing, or cause. The termination of certification by action

of a Judge shall not be considered a reflection on the character or ability of the student;

(4) be introduced to the Court by an attorney admitted to practice before this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for his or her services;

(6) certify in writing that he or she is familiar with and will comply with New York Rules of Professional Conduct as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court; and

(7) certify in writing that he or she is familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(d) The law student, supervised in accordance with these rules, may:

(1) appear as counsel in Court or at other proceedings when written consent of the client (on the form available in the Clerk's office), or written consent of the United States Attorney when the client is the United States (or an officer or agency thereof) or of the Attorney General of New York when the client is the State of New York (or an officer or agency thereof) and the supervising attorney's name has been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits; and

(2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with the matter in which he or she has met the conditions of (d)(1) above; each such document shall also be signed by the supervising attorney.

(e) Forms for designating compliance with this rule shall be available in the Clerk's office. Completed forms shall be filed with the Clerk.

(f) Practice by students pursuant to this rule shall not be deemed to constitute the practice of law within the meaning of the rules for admission to the bar of any jurisdiction.

RULE 83.7

STUDENT LAW CLERKS

(a) A law student may serve as a student law clerk to a District Judge or Magistrate Judge of this Court.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as a student law clerk to a Judge;

(4) if required by the Judge, certify in writing that he or she will abstain from revealing any information and making any comments at any time, except to his or her faculty advisor or to court personnel as specifically permitted by the Judge to whom he or she is assigned, concerning any proceeding pending or impending in this Court while he or she is serving as a student law clerk. A copy of such certification shall be filed with the Clerk.

(c) A Judge supervising a student law clerk may terminate or limit the clerk's duties at any time without notice, hearing, or cause. Such termination or limitation shall not be considered a reflection on the character or ability of the student law clerk unless otherwise specified.

(d) An attorney in a pending proceeding may at any time request that a student law clerk not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the student law clerk's contact with the proceeding.

(e) For the purposes of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for United States Judges, a student law clerk is deemed to be a member of the Court's personnel.

(f) Forms designating compliance with this rule shall be available in the Clerk's office.

RULE 83.8

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modification as may be necessary to meet emergencies or to avoid injustice or great hardship.

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